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OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1994

CAROL WINPENNY, petitioner

v.

JAMES WINPENNY, III, respondent

PETITION FOR A WRIT OF CERTIORARI TO PENNSYLVANIA SUPERIOR COURT

PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION

When partition law (its purpose not to liquidate but to allow a cotenent to have his interest seperately) requires court adjudication of cotenents' bids and all things necessary from which to compose a schedule of distribution before it will authorize an order to hold a sale not confined to cotenents, is such an order invalid when it is made after refusing process opportunity to a cotenent's bid and without any adjudication?

PARTIES

Parties are as on the cover.

But, after the period for which review is prayed, the Superior Court of Pennsylvania made an ancillary Order calling Thomas Conley a "successor party". He was never a cotenent. He has possession of the property.

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(this case) Winpenny (1982) 296 Pa Super 299; 442 A2d 778 at 783

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Pennsylvania Rules of Civil Procedure for partition; 42 Pa.C.S.A. 1551 to 1574

5 Goodrich Amram 2d 555, 556 sec,1568.2 1976 Ed. Currently there is a revisied Ed. of 1990 that uses secs. 1568:2 and 1568:3 for the same thing. (This is the citation used in the first appeal on the merrits.)

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Prayer is for issue of Your writ of certiorari to review a short period in the trial record which shows there is no process for the decisions resting upon it, and the judgements and opinions of the Superior Court of Pennsylvania made afterwards on three appeals.

OPINIONS BELOW

Not for review:

Delaware County Pennsylvania Court of Common Pleas, No: 3706-76 (hereinafter called "trial court"); Summer of 1979 On Order to have partition; devide only former marital house. Not Reported.

Superior Court of Pennsylvania (hereinafter called "Superior"); March 5, 1982. Affirmed and remanded to follow the Rules of Court. 296 Pa Super 299; 442 A2d 778

For Review

Trial Court, March 3, 1989. On Order for confirmation of sale per agreement with Non-party which had supercedas for appeal. Not reported.

Superior, No:3335 PHL 88, Nov.8,1989 Affirmed. Not reported.

Trial Court, Dec. 21,1990. On Order per Non-party's petition to enforce wrong agreement while the record was out and the former affirmation not on the trial docket. Property was taken. Not reported.

Superior, No: 2819 PHL 90, Dec. 14,1990 On ancillary per curim Order refusing to put Non-party off docket. Called Conley a "successor party"Not reported.

Superior No:2819 PHL 90,Oct. 17, 1991 Affirmed. Not reported.

Trial Court, Sept. 21, 1993. On Order directing distribution. Not reported.

Superior, No:2183 PHL 93, April 26,1994 Affirmed; sua sponte found Petitioner frivolous; remanded for her to be assess-counsel fees etc. One of panel of three dissented to assessment. 434 Pa.Super 348; 643 A2d 677.

JURISDICTION

Superior affirmed the last part of the last order provided by partition law on April 26, 1994. The Supreme Court of Pennsylvania, No.615 E.D. Allocutar Dkt. 1994, denied allowance of appeal and denied reconsideration on January 23, 1995 (p. 4 a). It has been 90 days plus a Sunday to filing this petition on April 24, 1995 in U.S. Post. Jurisdiction is invoked under 28 U.S.C. sec. 1257(a) with the claim that the Pennsylvania

Court has taken Petitioner's property without due process of law persuant to U.S. Constitution Amendment IV sec. 1.

RULES OF COURT

Pennsylvania Rules of Civil Procedure, 42 Pa.C.S.A. Rules 1551 thru 1574 have superceded statue for partition. Rule 1557 to the end are appended (pp. 16a)

Rule 1553. Parties

An action for partition may be brought by any one or more cotenents. All other cotenents shall be joined as defendants.

STATEMENT OF CASE

This is Partition. It has nothing to do with divorce except that property is no longer held by the entirity. "RR" refers to reproduced record for appeal. It and the record are at Superior. This history is different from Superior's.

Our law for procedure

Prayer for consideration begins in March 1983 after return from interluctory appeal concerning two preliminary Orders directing partition to begin. The latter, Order of Feburary 5, 1979 (p.10 a) stated that it considered prior Orders and that only the former marital home should be devided. It was written in a manner persuant to Pennsylvania Rules Of Civil Procedure for partition, Pa.R.C.P. 1557 (p.16 a). Other Orders from this preliminary period are written for an obsolete method of partition. Convolution of process

begins by relying upon one, infra. This period had a Master's report which is not the missing Rule 1569 Master's Report. Superior's affirmation directed following the partition Rules "1551 et seq.": Winpenny (1982) 296 Pa.Super. 299 at 309; 442 A2d 778 at 783.

Arise of No Opportunity

Missing vital process may be seen by comparing one page of trial docket (pp 17a-1 17a-2) from this point, Rule 1558, to the Master's Motion For Sale Of Real Estate (p 15 a), which wanted confirmation of an agreement of sale already made with a non-party, to the Rules.

Preliminary conference per Rule 1558 resulted in the Order of March 17, 1983, which was withdrawn but relied upon infra., and the Order of March 28, 1983 (p. 11 a), which reappointed the Master directing him to conduct a sale etc.

> "all in accordance with Pennsylvania Rules of Civil Procedure 1559 et sec,"

and withdrew March 17th's.

With the Master the Cotenents choose an appraisor. Carol objected to the findings of the title search. No answer. The Master called for bidding confined to parties. James did not bid. On March 7, 1984, Carol made three bids, each written and verified for the appraised value. She put conditions upon her bids. Then adjudication was in the future.

All at one time, James came back from 13 years in Hawaii, a real estate man pestered Carol at the house, and without reason the Master recalled bidding between the parties.

Carol filed for Rule For Security For Costs and recieved a stay just before recalled bidding was to take place, October 17, 1985. There was hearing before Hon. Robert Wright. James admitted under oath that he would

bid for someone else (Tr. 1985 p.62 RR10) and swore he could not buy the property (Tr. 1985 p. 109 RR 15). The entire Security for cost procedure and its Order of November 25, 1985 did not touch the issues set out by Rule 1570(a). Judge Wright said (Tr. 1985 p.66 RR 14):

> "the only issue here is whether or not I'm going to order him to post security"

Carol asked for reconsideration of the Order on Security For Costs. Judge Wright's Order of April 7, 1986 (p.12a) denied reconsideration. In lifting the stay it directed sale,

> "in accordance with the Order of Court dated April 13, 1977, as affirmed by the Supreme Court, and the Order of March 17, 1983"

The Master's Motion For Sale Of Real Estate infra. depended upon this Order of April 7, 1986. Both Orders, directed to be followed, had obsolete method of partition. The first, undone by Superior

the second, withdrawn. (At the time the Order of March 28, 1983 was missing from the record (verified by Carol in her Opposition To Motion For Sale Etc.#4) and James' Attorney had written to Judge Wright drawing notice to the Order of April 13, 1977.)

Instead of holding recalled bidding, the Master showed he was going to sell through a broker. Carol filed a petition to clarify or strike the Order of April 7, 1986, which was docketed July 7, 1986 (RR 18-22). Hon. Howard Reed wrote "rule refused" upon it, thus, denying process. Then Judge Reed made the Order of July 2, 1986 (p. 13 a) which put us back into the partition rules (not saying where) and on "Orders heretofore entered".

James' attorney wrote to Judge Reed, July 22, 1986 (RR 36) saying it appeared to him that we were at a point

in the Rules described by Rule 1568. (That is past bidding between the parties.) He requested,

> "that the Court, under the authority granted by Rule 1568, direct the Master to effectuate a sale of the property by listing the property with a real estate broker"

Carol refuted (RR 38). She said she had just verified facts in her refused petition. That recalled bidding between the parties had not taken place. That Rules favor parties over outsiders. That Mr. Berman should be required to follow procedure if he has reason for skipping rules, then Mr. Berman would be required to verify.

On no process except said letters, Judge Reed made the Order of Augest 11, 1986 (p.14 a) which directed selling through a real estate broker. The Master's Motion For Sale Of Real Estate depends upon this Order too. The Order

states its authority is from Rule 1568. Said Rule (16a-8) is preparatory to the Master's Report of Rule 1569 which recomends the Court's decree. (If an order persuant to Rule 1570(b)(4) tc hold a sale not confined to cotenents is required, should it be a private public sale or a public public sale?) The docket (p17a-2 shows only "8-11-86 Order filed to conditions as set forth" and that notice was sent, but not to whom. This Order is written upon the letter head of James' attorney. Carol verified in her Opposition To Motion For Sale Etc. infra. #4 (RR30) that she had not recieved notice; at #3 that she couldn't see the record because it was lost. At the next appeal to Superior No. 3335PHL 88, the County tells Superior that the record was lost and put together from the "attornies files"(RR 45). Carol did not know.

On Augest 10, 1987 the Master filed Motion For Sale Of Real Estate (p15 a). He motioned to have an agreement of sale already made with Non-Party Conley confirmed. His Motion depended upon the aforesaid Orders of April 7, 1986 (including April 13, 1977) and Augest 11, 1986 for authority to have made the agreement. Neither Order had had hearing or papers other than said letters. Instead of using the Order of March 28, 1983 to show his mastership, the Master used the Order of January 22, 1979 which has obsolete method of partition that had been undone by Superior on interlucatory appeal. The Master stated he had had hearing and had presented fact to the Court, resulting in the 1979 Order. Before interlucatory appeal, he had heard "what additional property, if any, should be devided". (Infra. this 1979 Order is relied upon again because

there is no adjudication from which to compose the schedule of distribution.) This Motion to confirm sale to a non-party is a motion for the first part of the order authorized by Pa.R.C.P. 1573 Return Of Sale And Schedule Of Distribution (16a-14) which is the last Rule of partition to authorize an order.

Inbetween Pa.R.C.P. 1559 (its place upon the docket identified by the Order of March 28, 1983 (p11 a)) and this point (Rule 1573(a)(1),(a)(2)), there has been no Master's Report of Rule 1569, which must be filed persuant to 1569(c) (16a-9) and no court adjudication or decree persuant to Rule 1570(a) and(b).

Carol answered with Defendant's Opposition To Motion For Sale Of Real Estate To Outsider and Motion To Confirm Defendant's Bid For Plaintiff's Half Interest In Property. (RR 29). James

did not answer. Hearing was had before visiting Judge John Cherry. The Order of Feburary 9, 1988 (p 5 a) confirmed sale and authorized conveyance via the agreement dated May 11, 1987 which had an addendum, at #4, (RR 27).

> The agreement and sale is subject to the approval of the court by an unappealable order.

There was no adjudication with this Order confirming sale to a non-cotenent. Carol's post trial motions were dismissed. Carol filed appeal. The Trial Court opinion, Mar. 3, 1989, states (p 6a-4)

> "she claims that other bids were made on the property, however produced no such evidence at hearing"

Carol had pled her bid. The Master had read them into the record (tr. 1988 p.18 RR40.2) saying he could not comply with the conditions and lack of deposit.

Superior's Opinion, 3335 PHL 88, decided Nov. 8, 1989 (1a-5) found that

the Master rejected Carol's bids (when he may only recommend rejection: Rule 1569). (p.16a-9) Superior adjudicated Carol's bids when there was no record from which to do it (1a-4,5). Superior states the Master's Report of Rule 1569 comes after conveyance to a non-cotenent (p 1a-5 1a-6). Superior shows it does not understand it is affirming confirmation of sale because it believes the Trial Court will maintain jurisdiction of price (p 2a-1).

Superior affirmed. It would never look again because of "law of the case" doctrine (even though the Orders resting on this affirmation were invalid in their own rights too):

Refusal in Superior 2819 PHL 90; Oct.17, 1991 (p 2a-4, 2a-5)

> The propriety of the order of February 9, 1988 may not now be challenged. Appellant is estopped by "law of the case" doctrine..

Refusal in Superior 2183 PHL 93; April 26, 1994 (p 3a-11 footnote 3 coming from p 3a-9):

> Carol's contentions of no adjudication with respect to her bid have been specifically addressed by the Superior Court in Winpenny v Winpenny No. 88-3335...Nov. 8, 1989...

This case has never been allowed appeal by the Supreme Court of Pennsylvania. Refusal on the "no opportunity" question: 156 E.D. Allocutar 1990 when remand was Jan. 14, 1991, after the property was taken and the next appeal filed to the Order of enforcement, of what was not on the county docket

50 E.D. Allocutar 1992

615 E.D. Allocutar 1994

Explanation for "three appeals"

The last appeal is after the Order directing distribution persuant to the Master's proposed schedule. The Order is the last part of the order authorized by Rule 1573(a). Since there was no ad-

judication from which the Master could compose his schedule, he used a 1979 Order which was not supported by adjudication of the items set out by Rule 1570. p. 16a-10 The Trial Court made no adjudication here either.

Inbetween the two appeals, the Trial Court acted upon the petition of Non-party Conley who did not ask to intervene and was not made a party. See Order Sept. 1990 p. 7a The sheriff took the property in Oct. 1990. The Master gave his deed to Conley for payment. Then Superior, without one word of process for support, called Conley a "successor party". (Shows in next opinion p. 2a-10, 11)

Had the process not been convoluted confirmation of sale and direction for distribution would be ordered together at the end of the case. Rule 1573a Conley would not be interested until the case was

over, if at all as Carol's bid would have had opportunity. There would be one appeal rather than three. Because Carol has made three, Superior (pp 3a-9, 10, 11) Orders her to be assessed counsel fees. (That way, if she won't rely upon judgement by picking up the money, when it is offered, the Court could to do it for her.)

ARGUMENT FOR WRIT

Carol's bids should have been brought to Court by the Master per Pa.R.C.P. 1569 which recomends the Court's adjudication per Pa.R.C.P.1570(a)(7). Even if he recommended against them or said that no cotenent had bid.

This case has no Master's Report of rule 1569. Thus the informal opportunity

to get the Master to change his report and the opportunity of filing exceptions to it for Court adjudication of Carol's bid and all necessary to compose a schedul of distribution for the proceeds of sale is missing.

If a cotenent,rather than an outsider, is awarded the propertythe title isn't destroyed so it can carry its liens and have new for owlty. See that part of the court's order is to include that: rule 1570(b)(2). That is why making a schedule of distribution when a co-tenent's bid has had no opportunity is a waste of time. (So, is making one without adjudication.)

An order to conduct a sale not confined to cotenents cannot be made before court adjudication and order: 5 Goodrich Amram 2d sec 1568:2:1976 Ed.

No public sale , nor private sale not confined to parties, is permissible with-

> out an order of the court, to be included in thecourt's decree. The court may enter such an order only when it is "required" that is, when no confirmable bid can be obtained from any cotenent, at a private sale confined to the parties..... Distribution of the property among the cotenents is the basic concept of partition under these Rules.

The above was in Carol's first brief since "missing process". (Now there is a 1990 Ed., same citation in sec. 1568:2 and1568:3)

Our orders to conduct a sale not confined to cotenents have no process at all. There is no adjudi cation of Rule 1570, no opportunity in Court for Carol, and no order per-suant to Rule 1570(b)(4) to allow a non-cotenent to come to sale.

Even after a bona fied purchaser has taken the property, if the execution sale depends upon a void judgement, the title is not good

Harris v Harris 428 PA 473; 239 A2d 783,784 par 2; 785 par 4-6

Respectfully Submitted,

Carol Wagner

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 3335 Philadelphia, 1988

Appeal from Order of the Court of Common Pleas, Civil Division, of Delaware County, No. 3706 of 1976.

BEFORE: WIEAND, BECK and MONTGOMERY, JJ.

MEMORANDUM: FILED NOV 8 1989

The marital dispute between James and Carol Winpenny has been in litigation in one form or another since 1968, when James commenced an action in divorce. A decree in divorce was subsequently entered in 1975 and was affirmed by the Superior Court. Winpenny v. Winpenny, 234 Pa.Super. 725, 342 A.2d 426 (1975). Allocatur was denied.

At the time of the divorce, the parties were the joint owners of a residence at Six Prince Edward Lane, Middletown Township, Delaware County. An

action to partition the real estate was commenced by James in 1976, and a decree of partitiсn was entered and affirmed on appeal Winpenny v. Winpenny, 296 Pa.Super. 299, 442 A.2d 778 (1982). Allocatur was denied by the Supreme Court, and a petition for reconsideration was refuse.

After a preliminary conference pursuant to Pa.R.C.P. 1558, the parties agreed and the court directed the Master in the partition proceedings to offer the property to the parties, and if they did not purchase it at a satisfactory price, to list it for sale with licensed broker. Carol submitted several offers to buy the residence, in which she had continued to reside, but her offers were conditional; and, therefore, they were rejected by the Master. In 1986, pursuant to a later court order, the Master listed the property for sale with a real estate broker. On May 11, 1987, the

Master was able to obtain a firm offer to purchase the real estate for $65,000. Although it had been appraised in 1983 for $60,000, Carol refused to join in the sale. Therefore, the Master filed a petition requesting the trial court to approve the sale and authorize the Master to convey title. This petition was granted on February 9, 1988. Carol filed post-trial motions, which were dismissed by an order dated September 27,1988. The present appeal followed.1

Carol argues on appeal that the trial court should have allowed a request for a change of venue. However, this issue was raised prior to the entry of the decree in partition and was argued on a prior appeal. The Superior Court, at that time, held that the trial court had not abused its discretion when it denied her request for a change of venue. See: Winpenny v. Winpennv, supra at 304-305, 442 A.2d at 781. "It

is hornbook law that issues decided by an appellate court on a prior appeal between the same parties become the law of the case and will not be reconsidered on a second appeal." Commonwealth v. Tick, 431 Pa. 420, 427, 246 A.2d 424, 427 (1968). See also: Muhammad v. Strassburger, 374 Pa.Super. 613, 543 A.2d 1138 (1988); Roskwitalski v. Reiss, 338 Pa.Super. 85, 487 A.2d 864 (1985). The venue therefore,is not properly raised in this appeal.

Carol also contends that the trial-court's order directing a private sale is void, that her bid should have been accepted, and that she should have an opportunity for open bidding limited to the parties. We reject these arguments. The parties were initially given the opportunity to submit private bids for the real estate. Carol submitted a bid at the appraisal figure of $60,000, but it was conditional upon her former husband's paying one-half of the taxes and sewer

liens which had attached during the years in which Carol had occupied the premises. Because the offer was not unconditional, the Master rejected the bid. See: Pa.R.C.P. 1567 (requiring allocation of proceeds by Master). Thereafter, upon petition, the trial court directed a private sale not confined to the parties. Such a sale is specifically authorized by Pa.R.C.P. 1568. The manner thereof is prescribed by Pa.R.C.P. 1S72 and is subject to supervision by the court. The order in the instant case was within the discretion of the trial court. A review of the record discloses no abuse of the trial court's discretion.

Appellant next contends that the parties and the Master should have been directed to appear for a conference in order to prepare the Master's report required by Pa.R.C.P. 1569. However, the Master has not completed his duties, and

his report, therefore, is not yet due. Moreover, the rule does not require a conference with the parties before the Master files the report required by Rule 1569. The record does not disclose any request by the parties for an interim Master's report or any reason why one should have been directed sua sponte by the court. It is now time for the sale of the real estate to be consummated pursuant to thetrial court's order. It will be time enough for the Master to file a report thereafter.

Finally, appellant complains because the costs were not determined before the court directed a sale to a third person and because her former husband was not required to post security therefor. The amount of the costs can be determined after the real estate has been conveyed and the consideration paid. Meanwhile, the real estate itself will be security for the costs of sale.

The record discloses that the rules pertaining to partition have been followed faithfully by the trial court and the Master, but that a speedy disposition has been delayed repeatedly by the parties,

Appellee has suggested that the value of the real estate has increased since it was appraised in 1983; and, therefore, he requests that the matter be remanded for a new appraisal. This request is not properly made in the first instance to a reviewing court. No similar request has been made to the trial court, and the record now before this Court is inadequate to allow us to do more than review the order from which the appeal was taken. That order, from which the appellee did not appeal, directs the Master to convey the former marital property to the purchaser pursuant to an existing agreement of sale. We hold only that the order of the trial court was properly entered and

did not constitute an abuse of discretion. If the means exist for obtaining a higher price, an appropriate request can be made to the trial court which has continuing responsibility for supervising the manner of partitioning the real estate.

Meanwhile, the order of the trial court is AFFIRMED.

1The order dismissing post-trial motions was not entered until October 17, 1988, and notice of appeal was filed on November 15, 1988.

IN THE SUPERIOR COURT OF PENNSYLVANIA

JAMES WINPENNY,III V CAROL WINPENNY

NO,2819 PHL' 90

Appeal from the Order of September 18, 1990

Before; Rowley,P.J., Cavanaugh and Wieand JJ.

FILED October 17 1991

This is an appeal from the order of the lower court dated September 18, 1990 requiring the appellant to vacate a residence in Delaware County. For the rea-

sons stated hereinafter, we dismiss this appeal.

Appellant Carol Winpenny appears again before this court contesting the partition of her former marital residence, its subsequent sale, and her eviction. The facts of this case, stated as briefly as the convoluted history of this case will permit, is as follows.1

James and Carol Winpenny were husband and wife until 1968, when Mr. Winpenny filed for divorce. A decree in divorce was entered in 1975, and affirmed upon appeal to this court, with allocatur denied by our supreme court. Win~ennY v. Win~enny, 234 Pa. Super. 725, 342 A.2d 426 (1975). When the divorce decree was granted, appellant was residing in the former marital home, Six Prince Edward Lane, in Middletown Township in Delaware County. Mr. Winpenny sought to have the property partitioned, and a decree in partition was entered and affirmed upon appeal. Allocatur was

denied, and this court refused rehearing. Winpenny v. Winpenny, 296 Pa. Super. 299, 442 A.2d 778 (1982), Allocatur denied 10-15 82, No. 192 E.D. Allocatur Docket 1982.

Following a preliminary conference, a master was appointed to conduct a sale of the former marital residence and administer the distribution of proceeds. Appellant submitted several offers to purchase the property; however, all of her offers were conditional and therefore they were rejected. In 1986 the Master listed the property for sale and received a firm offer of $65,000. The property had been S60,000 in 1983. Mrs. Winpenny refused to join in the partition, forcing the master to file a petition requesting the trial court to approve the sale. The master's petition was granted February 9, 1988, the appellant filed post trial motions which were denied, and this court affirmed the trial court's order compelling sale in Winpenny v. Winpennv, memorandum opinion,

Pa. Super. , 570 A.2d 1095 (1989), rehearing denied January 19, 1990, allocatur denied _ Pa. , 585 A.2d 469 (1990).

Appellee Conley, a purchaser of the property for value at the master's sale, brought the instant action during the pendency of appellant's petition for allowance of appeal. Appellee sought an order from the lower court directing the master to schedule settlement and effectuate transfer of the property, ordering the appellant to vacate the property, and instructing the sheriff to evict appellant. That order issued September 18, 1990.2 This appeal by Mrs. Winpenny followed.

Appellant has stated her claim for relief as follows:

Mostly [appellant] wants voidness of both the enforceing (sic] (o]rder (Sept. 18, 1990 and the (o]rder being enforced Feb. 9, 1988) considered and struck. (Brief for Appellant at 9)

As to these orders, our standard of review is extremely limited. Regarding the order of February 9, 1988 we note that an appeal was taken from that order to this court, and the validity of that order was affirmed. Allocatur was denied by our supreme court. The propriety of the order of February 9, 1988 may not now be challenged. Appellant is estopped by the "law of the case" doctrine, as recently noted by this court in Banker v. Valley Forge Insurance Company, Pa. Super. 585 A.2d 504, 508 (1991).

The law of the case doctrine applies, only if, inter alia, the parties on the two appeals are the same. 'It is hornbook law that issues decided by an appellate court on a prior appeal between the same parties become the law of the case and will not be reconsidered on a second appeal.

Commonwealth v tick, Inc 431 Pa 420, 427 246 A2d 424, 427 (1968)(citations omit)

See also Pittsburgh Limestone Corp., 375 Pa 390, 394; 100 A2d 595, 598 !(53)) the doctrine of "law of the case" is that when an appellate court has decided a question that has been submitted to it on appeal, it will not, upon a subsequent appeal on another phase of the same case, reverse its previous ruling even though convinced it is erroneous...) Daniels v State Farm Mutual Auto Insurance Co. 305 Pa. Super Ct. 352,356, 451 A2d 684, 686 (1982) Albright v Wella Corp. 240 Pa Super 563, 567, 359 A2d 460, 463 (1967)

Citing Muhammad v. Strassburger 374 Pa Super, 613,618-619, 543 A.2d 1138, 1140 (1988), allocatur qranted 520 Pa. 618, S54 A.2d 510 (1989).

Appellant challenged the propriety of the lower court's initial order at this appellate level in this same case involving the identical parties (and their successors in interest). This question is therefore not reviewable again by this court.3 Any issues not raised at that time were waived, and we cannot grant the relief appellant requests regarding the February 9, 1988 order.

The September 18, 1990 order only may

be challenged. This order, it should be noted, only enforces the prior order which has been found proper. Appellant in her first issue attempts to argue that this order is based on improper prior orders. As noted supra., the prior order cannot now be challenged, and appellant has not stated any claim upon which we can grant relief. Thus, this first claim fails.

Appellant also contends that the lower court lacked jurisdiction to enact an order enforcing its prior order, as the record was out, and there was a supercedeas and general stay. This contention is wholly without merit. Initially, we note that we are unable to find in the record any granting of a stay or supersedeas by this court or our supreme court. Appellant filed an application for a stay to this court which was denied March 6, 1990 in light of this court's decision of November 8, 1989 which affirmed the initial lower court order. The only pending appeal, therefore, was a

petition for allowance of appeal which was filed on February 20, 1990, and denied by our supreme court on November 16, 1990. That petition, however did not act as a stay of proceedings. Petitions for permission to appeal do not stay the proceedings in the lower court unless the lower court has ordered the proceedings stayed. See 42 P.S. §702 (b). There was no such order entered by the lower court.

Finally, we point appellant to Pennsylvania Rule of Appellate Procedure 1701 (b)(2) which provides that a trial court may "enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter." The order was entered September 18, 1990, and there was no supersedeas or stay in effect. The order entered on September 19, 1990 enforced the master's sale of the property, and was proper.

Appellant also claims that since) the "record was out on appeal" the lower court

was divested of jurisdiction, and cited Inaram v. Dovertown Estates, 307 Pa. Super. 22, 26, 452 A.2d 884, 885 (1982) in support of that proposition. What Ingram actually stands for, though, is that once a party has taken an appeal to an appellate court the trial court is divested of subject matter jurisdiction until further order of the appellate court reinstating jurisdiction. Ingram further notes the exceptions to be found in Pa.R.A.P. 1701 (b), which exceptio~s apply in the instant case. The record was in the Supreme court on Appellant's petition for allowance of appeal, which was denied, but that does not prevent the lower court from enforcing its prior order.

Appellant also cites Gilbert v. Lebanon Valley Street Railway Co., 303 Pa. 213,154 A. 302 (1931), for the same proposition. She fails to note that this case interprets the Act of March 5, 1925, P.L. 23, and the Act of May 11,1927,

P.L. 972, which modified the original Appeals Act of May 19, 1897, P.L. 67. Both acts, as precursor to the current 42 Pa. C.S. §702, Act of July 31, 1970, P 223, have been repealed. Notwithstanding that fact, Section 12, as amended by the 1927 act provides that "in appeals from judgments and decrees ..., the appeal shall not operate as a supersedeas" unless specially allowed. Clearly, then, even the prior law does not support appellant's claim.

Appellant finally attempts to argue that the prior order was invalid, and the only way to show that was through the record which was in the supreme court. Appellant may not reword her challenge to the prior order whose validity has been conclusively established. Thus, this second claim fails.

Appellant's third claim states that appellee Conley was a "non party", consequently his pleadings could not be enter-

tained by the lower court and there was no-evidence for the order, and thus it was void. Appellant has raised this issue with this court in a motion filed November 13, 1990, which was denied by order of this court on December 14, 1990 accompanied by a memorandum addressing the claim of the appellant on the merits. As discussed supra, appellant cannot raise an issue which has already been addressed by this court. This final claim thus fails.

Order Affirmed.

Footnotes:

1. We note that the appellant appears before this court pro se. Her briefs are poorly written, fail to comply with numorous rules of appellate procedure, often fail to articulate logical arguments, and are largely incomprehensible. However we also not that those arguments which she has raised are clearly meritless on their face. We, therefore, have attempted to comprehend her arguments and will address those arguments to prevent further unneccessary waste of judical rescources.

2. We note that Judge Koudelis, in his Opinion of December 21, 1990 states the appellant was evicted from the property on October 24-25, 1990, settlement conducted Oct. 25, 1990, and a deed of that date recorded in the deed book on December 11, 1990.

3. See appellant's reply brief, at page seven, where the appellant states:

> we are considering the conveyance order. It has seen only the trial court and the Superior Court once before on the merrits.

Contrary to what the appellant believes one appellate review is all to which she is entitled.

JAMES WINPENNY, III

VS

CAROL WINPENNY,
Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 02183 Philadelphia 1993

Appeal from the Order dated May 13, 1993 docketed May 26, 1993 in the Court of Common Pleas of Delaware County, Civil No. 3706-76

BEFORE: CIRILLO, BECK and JOHNSON, JJ.

OPINION BY CIRILLO, J.:Filed APR 26 1994

Carol Winpenny (Appellant) appeals from an order entered in the Court of Common Pleas of Delaware County approving the Schedule of Distribution, Costs and Master's Fees for property sold pursuant to a partition order of the Court of Common Pleas, as part of a long-standing divorce proceeding. We affirm in part and remand in part for assessment of costs.

On April 13, 1977, Partition of 6 Prince Edward Lane, Middletown Township, Delaware County, Pennsylvania, was directed by the Court of Common Pleas of Delaware

County as part of the divorce settlement of Carol and James Winpenny, III (James).

Appellant appealed the partition order. The order was affirmed by this court, Winpenny v. Winpenny, 296 Pa . Super. 299, 442 A. 2d 778 (1982), and the Pennsylvania Supreme Court denied Appellant's petition for allocatur. 10-15-82, No. 192 E.D. Allocatur Docket 1982. A petition for rehearing by this court was denied.

On March 28, 1983, an order was entered by the Court of Common Pleas of Delaware County, appointing Howard S. Klein, Esquire, as Master in Partition to conduct a sale of the property. This order was appealed by Appellant and affirmed by this court. The Pennsylvania Supreme Court denied Appellant's petition to appeal.

On April 7, 1986, after disposition of the appeals related to the March 28, 1983 order, Appellant moved the Court of Common Pleas of Delaware County for reconsideration of the order.

Reconsideration was denied and the orders of April 14, 1977 and March 28, 1983 were directed for enforcement.

On March 7, 1984, Appellant submitted a bid on James' share of the property. This bid was subject to the condition that "only [half] the costs of the partition case, and (half) of the taxes liened (sic) on said property and (half] of the sewer rent liened (sic) on said property shall be paid in cash towards satisfaction of [the] judgment Carol liens (sic) against James, recorded in Delaware County." R.R. at 35. This bid was rejected by the Master in Partition due to the conditions attached.

On May 11, 1987, a bid approximating fair market value was submitted by Thomas D. Conley to purchase the property. This bid was accepted and the trial court approved the agreement of sale on February 9, 1988. Post-trial motions by Appellant were denied and she appealed to this court.

In a memorandum decision dated November 8, 1989 (No. 3335 PHL 1988), this court a~dressed the merits of Appellant's claims and affirmed the trial court's order. The Supreme Court of Pennsylvania denied Appellant's petition for appeal.

Thomas D. Conley petitioned the trial court to direct compliance and enforcement of the February 8, 1988 order. James joined Mr. Conley in this petition. After notice and oral argument, the trial court entered an order dated September 18, 1990 to enforce the sale to Mr. Conley. Appellant subsequently appealed the enforcement order to this court. This court affirmed the trial court's order (No. 2819 PHL 1990), and Appellant petitioned the Supreme Court of Pennsylvania for appeal.

The Master in Partition filed a Motion for Approval of Distribution, Costs, and Master's Fees for the sale on the property and a rule was entered on May 29, 1992. Appellant filed three motions to quash the

rule, all of which were denied. Meanwhile, the Supreme Court of Pennsylvania, on July 16, 1992, denied Appellant's appeal of the September 18, 1990 order. Following a hearing on the matter, the trial court entered an order approving the sale. Appellant appeals this order and raises the following issues:

Whether it was proper for the trial court to order the approval of Partition Master's motion, scheduling dis tribution of the proceeds from the sale of the property, while an allocatur petition was before the Supreme Court of Pennsylvania on a diparate issue?

The standard of review in such cases is whether an abuse of discretion was committed by the trial court. Johnson v. Johnson, 365 Pa. Super. 409, 411, 529 A.2d 1123, 1124 (1987)(citing Diamond v. Diamond, 360 Pa. Super. 101, 105, 519 A.2d 1012, 1014 (1986))(further citations omitted). An abuse of discretion will be found "if the trial court failed to follow proper legal procedure or misapplied the

law"- Braderman v. Braderman, 339 Pa. Super. 185, 190, 488 A.2d 613, 615 (1985)(citing Banks v. Banks, 275 Pa. Super. 439, 418 A.2d 1370 (1980).

Except for appeals from decisions of the Commonwealth Court and direct appeals allowed under 42 Pa.C.S. § 722, petitions to the Supreme Court of Pennsylvania are by permi-sion, not by right. 42 Pa.C.S. § 724; Pa.R.A.P. 1114. Failure to grant such review means that the decision of the Superior Court stands as law. In addition, a petition to the Supreme Court for allowance of an appeal does not have the effect of staying the trial court proceedings. Pa.R.A.P. 1313.

Furthermore, as is clear from the foregoing discussion of the procedural hi8tory of this case, the issues gleaned from Appellant's brief have been before this court on no less than five previous occasions and before the Supreme Court of this state on at least four prior occa-

sions. Re-evaluation is improper and pointless.

Appellant's difficulties in this matter stem from a misunderstanding of court procedure and, in particular, the duties - and responsibilities of a court-appointed Master in Partition. While it is by no means a requirement that persons who appear before the courts of this Commonwealth be skilled in the law, the interpretation of its statutes, rules, and regulations is not arbitrary, and requires practice. By the same token, the court system could not and would not be manageable without some reliance on the acquired expertise of practitiOners in its processes as dictated by procedural rules. It is true that certain areas of the law can be most complex and tedious, however, others require no more than mere common sense and patience to comprehend.

Although Appellant may have been exposed to more courts through her filings

than many experienced attorneys, she has failed to garner any understanding of the importance of procedure and the effect of judgments. Had she paid heed to any of the numerous opinions rendered in this case, she may have realized that the appellate court system exists to review genuine allegations of error committed by the trial courts. A mere mimicry of the buzzwords intended to invoke the operation of justice does not entitle a party to instant relief.

Abuse of the court system, whether by seasoned attorneys or by Pro se parties, cannot be tolerated. The principals of "law of the case"1 and res iudicata2 exist to provide finality of litigation in order to prevent situations, such as the one before us from occurring. See Banker v. Valley Forge Ins. Co., 401 Pa. Super. 367, 374, 585 A.2d 504, 508 (1991). A party must raise all matters related to an issue at the first opportunity or be forever barred from raising them again. Id.

Even giving the highest consideration to the pro se party, there can be no doubt from the record that Appellant has had every opportunity for appropriate hearings on the various points of which she now complains.3 There is also no basis for Appellant's proposition that the numerous adjudications were made with the intent to deny her of her rights.

Avenues exist to assist a litigant who does not have the resources to retain counsel. Although Appellant may have had unpleasant experiences with a prior attempt at gaining legal assistance, it is not clear whether all her current routes to such assistance have been exhausted. Rather than continuing to face denial of her claims, we suggest that Appellant explore these opportunities before commencing any further litigation.

To further encourage Appellant's more prudent use of the legal system, we are assessing costs against her. Under

Pennsylvania Rule of Appellate Procedure 2744,

> [A]n appellate court may award as further costs, damages as may be just, including
>
> (1) a reasonable counsel fee and
> (2) damages for delay . . .
>
> if it determines that an appeal is frivolous . . . . The appellate court may remand the case to the trial court to determine the amount of damages authorized by this rule.

Pa.R.A.P 2744. An appeal is not frivolous simply because it lacks merit. Marino by Marino v. Marino, 411 Pa. Super. 424, 601 A.2d. 1240 t1992). A claim is frivolous, however, if it has no basis in law or fact. Id. As stated above,we find the Appellant's claim to lack such foundation. Allowing Appellant to continue to utilize the courts to pursue fruitless claims at the expense of not only the opponents specifically, but also the public, will not be tolerated. Accordingly, we remand for a hearing to determine appropriate costs to be paid by Appellant. See Patel v. W.C.A.B. (Saquoit

Fibers Co.), 103 Pa. Commw. 290, 293, 520 A.2d 525, 526 (1987)(citing Appeal of Richard Michael George, 101 Pa. Commw. 241, 515 A.2d 1047 (1986)).

Order affirmed in part and remanded in part for a hearing and assessment of costs. Jurisdiction relinquished.

BECK, J., concurs in the result.

JOHNSON, J., files a Concurring and Dissenting Statement.

1 The doctrine states that issues decided by an appellate court on a prior appeal between the same parties become the law of the case and will not be reconsidered on a second appeal. Common- wealth v. Tickl Inc., 431 Pa. 420, 427, 246 A.2d 424, 427 (1968).

2 This Court, in an unpublished opinion dated December 14, 1990, has already determined that Mr. Conley is a "successor" party to this matter, thus precluding the possibility that adjudication was not made with identical parties to the proceeding.

3 Carol's contentions of no adjudication with respect to her bid have been specifically addressed by the Superior Court in Winpenny v. Win-enny, No. 88-3335, slip op. at 3-4 (Pa. Super. Nov. 8, 1989). In addition, the record includes at least five transcripts of hearings held by the trial court on these various issues.

over for dissent

BEFORE: CIRILLO, BECK and JOHNSON, JJ.

CONCURRING AND DISSENTING STATEMENT BY JOHNSON, J : FILED APR 26 1995

I concur in sd much of the Opinion of my distinguished colleagues as affirms the order of May 13, 1993, approving the schedule of distribution upon partition.

I must respectfully dissent from that portion of the Opinion which would award costs against Carol Winpenny, Appellant. The former husband, James B. Winpenny, III, did not participate on this appeal. The responding appellee, Thomas D. Conley, has submitted a brief composed of seven pages. There has been no application for further costs and damages, as contemplated by Pa.R.A.P. 2751. I would refrain from considering further costs and damages, as permitted under Pa.R.A.P. 2744, without some request being made by one of the parties.

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CAROL WINPENNY, Petitioner v JAMES WINPENNY, III, Respondant	No. 615 E.D. Alloc. Dkt. 1994 Petition for re-consideration of Denial of Petition for Allowance of Appeal from the Superior Court of Pennsylvania

ORDER

PER CURIAM:

AND NOW, this 23 day of January, 1995 the Petition for Reconsideration is denied.

Mr. Justice Montemuro is sitting by designation.

TRUE COPY FROM THE RECORD
Attest: January 23, 1995

SEAL

PATRICIA JOHNSON/s
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

DELAWARE COUNTY PA, COMMON PLEAS

VISITING SENIOR JUDGE JOHN CHERRY

ORDER OF FEBRUARY 9, 1988

AND NOW, this 9th day of February 1988 the above matter having come before this Court on Motion Or Howard S. Klein, Esquire, master in partition, and, Affidavit of Notice thereof to James B. Winpenny, III, Carol M. Winpenny, Thomas D. Conley, having been filed of record and, after hearing thereon, it is hereby:

ORDERED AND DECREED, that the sale of 6 Prince Edward Lane, Middletown Township, Pennsylvania to Thomas D. Conley in accordance with the terms of agreement for sale dated May 11, 1987 is hereby approved by the Court and further, it is hereby

ORDERED AND DECREED, that Howard S. Klein, Esquire, shall proceed with settlement on the subject premises and execute all documents necessary under the aggrement of sale to effectuate same.

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY PENNSYLVANIA,

JAMES B. WINPENNEY, III v.

CAROL M. WINPENNY

Bernard M. Berman, Esq., for the Plaintiff

Carol Winpenny, Pro Se

No. 3706=76

OPINION

CHERRY, S.J. March 3, 1989

This case has had a long, tortured history through the trial and appellate Courts of this Commonwealth. The present matter before this Court involved a Motion by a Court-Appointed Master in Partition for the Sale of Real Estate. The Court granted the Motion by Order dated February 9, 1988, to which Post-Trial Motions were

filed by the Defendant. These Motions were denied and an Appeal was filed by the Defendant to the Superior Court.

In conjunction with a divorce proceeding, this Court, on April 14, 1977, appointed Howard S. Klein, Esquire as a Master in Partition for the purpose of conducting hearings, gathering evidence and making recommendations to the Court regarding the disposition of property held jointly by the parties located at 6 Prince Edward Lane, Middletown Township, Delaware County, Pennsylvania.

Pursuant to the appointment, the Master held hearings and presented to the Court findings of fact and recomendations resulting in a decree signed by this Court on January 22, 1979 directing, inter alia, the sale of the premises. Subsequent to the Decree, an Order was again entered by this Court directing the Master to make an appropriate sale of the property in accordance with the Order of this Court dated

April 13, 1977, which Order had been appealed and which was ultimately affirmed by the Supreme Court of Pennsylvania.

For various and legion reasons, time passed and on August 11 1986 this Court ordered the Master to place the subject property with a licensed real estate broker for purposes of sale. On May 11, 1987, the Master entered into an Agreement of Sale of the property, which Agreement was approved by the Court. Previously on September 9, 1983, the property had been appraised for a value of SIXTY THOUSAND DOLLARS $60,000.00

On May 11, 1987, a subsequent Agreement of Sale was entered into by the Master with a Thomas D. Conley for the sale price of SIXTY-FIVE THOUSAND DOLLARS (S65,000.00).

As previously stated, the matter was presented to this Court by Motion and was opposed by the Defendant. After a hearing was held on the matter, this Court approved the Motion and directed the sale of the

property by Order dated February 9, 1988.

It is clear from a review of the record that Plaintiff, through his Counsel, has complied with all rules concerning partition and is entitled to realize his undivided property. Lombardo V. DeMarco, 350 Pa. Super 490, 504 A.2d 1256 (1985). The Defendant continues to file ,Motions in this case in an attempt to avoid the inevitable. She claimed that other bids were made on the property, however produced no such evidence at the hearing. Her disjointed allegations in her.motions resurrect issues and matters which have long since been resolved by tne Courts, including the Commonwealth's highest Court.

The Court found absolutely no merit to the contentions presented at the hearing on this matter and found nothing of any additional substance in the ~Post-Trial Motions which would warrant any further delay in the execution of sale in this matter,

For the foregoing reasons, the Defendants Motions were denied and dismissed.

BY THE COURT:

COMMON PLEAS COURT OF DELAWARE CO.

SEPTEMBER 18, 1990

ORDER

AND NOW, this 18 day of Sept., 1990 upon petition of Thomas D. Conley, by and through his attorneys, William E. Jones Esquire and Spiros Angelos, Esquire, it is hereby ORDERED and DECREED as follows:

1. The Order dated February 9, 1988 is valid and in full force and effect.

2. It appearing that James Winpenny vacated the subject property years ago, Respondant, Carol Winpenny shall vacate the property 6 Prince Edward Lane, Middletown Township, Delaware County, Pennsyl-

vania, within 30 days of entrance of this Order, i.e. on or before October 18, 1990, 12:00 midnight.

3. If Carol Winpenny fails to vacate said property the Sheriff of Delaware Connty id directed to evict her. from the said property.

4. The Master in Partition, Howard s. Klein, Esquire, is directed to schdule settlement and to arrange for transfer of the title of the property to Thomas D. Conley, in accordence with the terms of the agreementof sale dated May 11, 1987. Said settlement shall occure within fifty-nine (59) days of the entry of this Order i.e. November 16, 1990.

If Carol M. Winpenny fails to vacate the said property in compliance with this Court's Order of February 9, 1988 and

the agreement of sale, Carol M. Winpenny shall be assessed liquidation damages in the amount of $100.00 per day through and including the date of settlement on the property, to be paid to or credited to James B. Winpenny ,111, and suffer such further sanctions as this Court may, in its discretion, deem appropriate.

DELAWARE COUNTY COMMON PLEAS COURT

Carol M. Winpenny, Pro Se
William E. Jones, Esquire, for Buyer
Spiros Angelos, Esquire, for Buyer
Bernard Berman Esquire for Plaintiff
3706-76 OPINION
Koudelis, J. December 21, 1990

Appellant raises the issue of the authority of this Court to enforce a final order affirmed by both the Superior and Supreme Courts upon petition of the equi-

table owner of a property partitioned and directed to be sold.

The partition action was commenced in 1976 and has had a long and convoluted history, not only in the Delaware County Court of Common Pleas, but also in the Pennsylvanla Superior and Supreme Courts. The parties, Plalntiff, James B. Winpenny, III and Defendant, Carol M. Winpenny, were formerly husband and wife. Premises 6 Prince Edward Lane, Middletown Township, Pennsylvania, which was conveyed to the parties jointly as tenents by the entireties in 1962, is the subject of this action.

Howard S. Rlein, Esquire was appointed Master in Partition in 1977 and the property was ordered to be sold with the proceeds of the sale to be divided between the partles. Following that Order, Defendant took several lnterim appeals, all

of which were denied. An Agreement of sale was then proffered by Thomas D. Conley and approved by Master Klein. The Agreement was submitted to the Court and by Order dated February 9, 1988, the Agreement was approved and the Master directed to proceed with settlement. Defendant filed post trial motions which were denied by the Court on September 27, 1988. She then appealed, once again, to the Superior Court which addressed the merits of the case by upholding the partition sale and conveyance of the property (No. 3355, Philadelphia, 1988). A Request for Reargument and Reconsiteration was then filet ant this too was tenied on January 19, 1990~ as was the Petition for Allowance of Appeal filed with the Supreme Court on February 21, 1990 (No. 156 E.D. Allocatur Docket D 1990).

The action came before this Court on Petition of Thomas D Conley, the prospective purchaser and equitable owner of the sub~ect premises. Following Hearing on

September 18, 1990, the Court issued an Order on the same date stating, inter alia, that the February 9, 1988 Order was valid, enforceable and directing Defendant to vacate the property by Midnight, October 18, 1990 or be evicted by the Sheriff. Master Rlein was directed to schedule arrange for transfer of title to the property to Thomas D. Conley, in accordance with the Agreement of Sale dated May 11, 1987.

Defendant filed a Motlon for ReconsideratiOn and Stay of the Order of September 18, 1990 and that Motlon was denied by this Court ln an Order dated October 23, 1990. It ls Defendant's appeal of the October 23, 1990 Order which necessitates this Opinion.

Defendant's Statement of Matters Complained of on appeal is largely unintellligible. However, from what the Court can glean, even though the Plaintiff verbally joined in the Buyer's Motlon to enforce the

final Order directing sale at the hearing on the matter, she is ob-ecting to the Buyer's standing in this action because he did not file a formal petition to intervene. She also objects to the Court's jurisdiction because at the time the Order was signed, the trial record was out at the Appellate Court level, A certain amount of confusion also exists as to the status of the record in this matter since Defendant filed assorted actions directly with the Appellate Courts. It appears that Defendant directly appealed the Order of September 18, 1990 to the Superior Court and her Request for a Stay of that Order was directed simultaneously to the Superior as well as the Common Pleas Court.

An Order was filed November 26,-1990 by the Superior Court which denied Defendant's Motion for a Stay. The reasoning of the Court was that it had already addressed the merits of the case in

an earlier decision by upholding the partition sale and conveyance of the property, and because of this, there was no likelihood of success (a prerequisite to the granting of a stay) on appeal.

Defendant also filed directly with the Supreme Court, a Motion "to put out non-PartY" Thomas Conley for failure to file a formal petition to intervene in this action. This seems to have been requested in an "Emergency Application for Summary Jutgment to Strike Void Order Appealed and Quash Appeal". The issue regarding Thomas Conley was one of the same lssues raised with this Court in the instant appeal. The Superior Court in an Order filed December 14, 1990 has already addressed and disposed of this issue in denying Defendant's Petition to remove Conley from the case.

The Court checked the Supreme Court E.D. Allocatur Docket for 1990 and found reflected therein, an Order from the Court issued o~ November 16, 1990 which denied

Defendant's Application for Stay until the Trial record returns to the trial court,

It is apparent from the Orders issued by the Superior and Supreme Courts, that all of the issues before this Court, including those addressing the merits of the case, the granting of a stay, the jurisdiction of the Court when the record is out and the rights of Thomas Conley, have already been adjudicated and disposed of by the Appellate Courts. There is no reason,therefore, for this Court to further address any of the matters raised by Defendant.

Further, it has come to the attention of the Court that Defendant was evicted from the property in question by the Sheriff on October 24 and 25, 1990. Settlement was conducted on October 25, 1990 and the Deed dated October 25, 1990 was recorded on December 17, 1990, at Deed Book Vol. 811, page 1967. For all of the foregoing reasons, the lssues raised in

this appeal by Defendant are now moot.

This case has been in the court system for i4 years. Defendant, who has been representing herself, has initiated repeatet motions and appeals which have not been presented with accuracy, brevity or clarity, often making it difficult to determine exactly what it is she complains of. Her actlons have been both frivolous and dilatory and she has ignored all rules and precedent designed to achieve finality in litigation. The issues in question have now been fully adjudlcated and it is time, once and for all, to put this matter to rest, Accordingly, the Court enforced the partition order by evicting the Appellant and directing completion of settlement.

GEORGE KOUDELIS

DELAWARE COUNTY COURT OF COMMON PLEAS
LABRUM. J OPINION FILED Sept. 21, 93

By Order dated May 13, 1993, the Court granted the Motion of the Master in Partition in this matter for the approval of a schedule of distribution, costs and master's fees and for the payment of a portion of those proceeds into Court pending the locating of a judgment creditor of the Plaintiff. A hearing was held on the Motion on August 4, 1992. At that time, testimony was presented by the Master. Counsel for Plaintiff concurred in the Motion while Defendant, appearing pro se, opposed the Motion. The grounds upon which Defendant opposed the instant motion were based exclusively upon her reassertion of issues previously litigated, namely her opposition to the sale of the property subject to partition by the Master.

By Order dated February 9, 1988, this Court approved the Agreement of Sale of the premises subject to partition. Defendant filed one of her numerous appeals from that

Order to the Pennsylvania Superior Court which affirmed this Court's Order.Defendant sought allowance of appeal to the Pennsylvania Supreme Court from the affirmance by the Superior Court but her Petition was denied.

Now, Defendant, in response to the Master's Motion for approval of distribution of the proceeds for the sale of the property and for payment of costs and fees, seeks once again to relitigate the issues upon which both this Court and the Superior Court already have ruled. Defendant offers no independent basis in support of her contention that the Court erred in granting the Master's Motion and in entering the Order of May 13, 1993. Instead, in her utter and abject refusal to accept the final determinations of the Courts on the issues relating to the partition of property in this matter, she merely seeks to renew her rejected arguments yet another time.

In view of Defendant's failure to

present any valid legal reason why the relief requested in the Master's Motion should not be granted, the Court entered its Order of May 13, 1993. Neither at the hearing on the Master's Motion nor at any time since, has Defendant offered any basis to suggest why the granting of the Master's Motion was improper and accordingly her latest appeal in the tortured history of this case in utterly without merrit.

It is for these reasons that we are of the opinion that this Court's Order of May 13, 1993 should be affirmed.

IN THE COMMON PLEAS COURT OF DELAWARE COUNTY PENNSYLVANIA

HON. John Diggins Feb. 5, 1979

DECREE, The last preliminary Order directing partition to begin, per Pa.R.C.P. 1557

AND NOW, this 5th day of February, 1979, upon consideration of the pleadings, record, prior Orders and Master's Report in

the above captioned Partition action, the Court having accepted and adopted the findings of fact and recommendations contained in the report of Howard S. Klein, E8quire, Master in Partition, lt is hereby ORDERED, ADJUD&ED and DECREED:

1. That a Partition and division be made of the property described in Plaintiff's Complaint situate at 6 Prince Edward Lane, Middletown Township, Delaware County, Pennsylvania.

2. That there shall be no partition and division of the property described in Defendant's Counterclaim and Amended Counterclaim,

3. That James B. Winpenny, III, and Carol M. Winpenny, or their attorneys shall appear for a Preliminary Conference before Honorable John V. Diggins on the 28th day of February 1979 at 9;00 o'clock A . M. in chambers, Court House, Media, Pennsylvania, to consider

(1) Whether the parties can agree upon a

plan of partition or sale;

(2) A simplification of issues;

(3) Whether any issues or matters relating to the carrying out of the Order of Partition shall be referred to a Master; and,

(4) Such other matters as may aid in the disposition of the action.

DELAWARE COUNTY COURT OF COMMON PLEAS

JUDGE DIGGINS MARCH 28, 1983

O R D E R

AND NOW, this 28TH day of MARCH 1983, it appearing that the PARTITION and division of property described in Plaintiff's COMPLAINT, situated 6 Prince Edward Lane, Middletown Township, Media, Delaware County, Pennsylvania, has been affirmed on Appeal, and after a Preliminary Conference between Defendant appearing on

her own behalf and BERNARD M. BERMAN, ESQUIRE, Attorney for Plaintiff, pursuant to Pennsylvania Rules of Civil Procedure 1558, it is ORDERED and DECREED that HOWARD S. KLEIN; ESQUIRE, iS reappointed MASTER to conduct a sale of the said premises and to hear such matters as may be pertinent to distribution of the proceeds of said Sale, all in accordance with.Pennsylvania Rules of Civil Procedure 1559 et sec. The Order entered by thiS Court on March 17,1983 is hereby withdrawn.

DELAWARE COUNTY COURT OF COMMON PLEAS

HON. ROBERT WRIGHT, APRIL 7, 1986

O R D E R

AND NOW, this 7th day of April. A.D, 1986, it is ORDERED that the MOTION for Re-sideration of the Order entered NOVEMBER 25, 1986 IS HEREBY DENIED.

It is FURTHER ORDERED that Howard Klein, Esquire is directed to make proper sale of the premises known as 6

Prince Edward Lane, Middletown township, Delaware County, Pennsilvania, in accordance with the Order of Court dated April 13, 1977, as affirmed by the Supreme Court, and the order of March 17, 1983.

DELAWARE COUNTY COURT OF COMMON PLEAS

HON. HOWARD REED, JR.

July 2, 1986

O R D E R

AND NOW, this 2nd day of JULY , 1986, the Rule to Show Cause herein is REFUSED and it is DIRECTED that the Partition proceedings proceed according to the applicable Pa. R.C.P. 1551 et sic and the Orders of this Court heretofore entered.

DELAWARE COUNTY COURT OF COMMON PLEAS

HON. HOWARD REED, JR.

O R D E R

AND this 11TH DAY OF AUGEST 1986 pursuant to Pennsylvania Rules of Civil Procedure, Rule 1568, the Master shall proceed forthwith to effectuate a sale of the subject premises, 6 Prince Edward Lane, Media, Pennsylvania by entering into a Listing Agreement with a licensed real estate broker for the sale of said premises. It is further ORDERED that the parties shall comply with all reasonable requests of the broker or Master with respect to the showing of said premises to prospective purchasers and effectuating a sale of the said premises.

DELAWARE COUNTY COURT OF COMMOM PLEAS

MOTION FOR SALE OF REAL ESTATE

TO THE HONORABLE, THE JUDGES OF SAID COURT:

NO: ?6-3706

Howard S. Klein, Esquire, master in partition in the above captioned matter, moves the Court to enter an Order directing and approving the sale of premises 6 Prince Edward Lane, Middletown Township, Pennsylvania to Thomas D. Conley for the sum of $65,000.00 and in support-thereof avers the following:

1. Movant, Howard S. Klein, Esquire by Order (Diggins J.) dated April 14, 1977 was appointed master in partition, in the above captioned matter.

2. Pursuant to the appointment, movant held hearings and presented to the Court findings of fact and recommendations resulting in a Decree (Diggins, J.) dated January 22, 1979, a copy of which is attached hereto as Exhibit "A".

3. Subsequent to the Decree an order

was entered by the Court (Wright, J.), directing movant to make proper sale of the premises in aacordance with the Order of Court dated April 13, 1977 as affirmed by the Supreme Court of Pennsylvania.

4. By Order'(Reed, Jr.,J.) dated August 11, 1986 movant was directed to place the subject property with a licensed real estate broker for sale of the premises.

5. On May 11, 1987, movant entered into Agreement of Sale of subject real estate subject to approval by the Court, a copy of said Real Estate Agreement is attached hereto as Exhibit "B" and by reference thereto incorporated herein.

6. On September 9, 1983, appraisal was made of the subject premises indicating a value estimate of $60,000.00. Movant incorporates herein the Certificate of Appraisal as Exhibit "C".

WHEREFORE, movant moves the Court to enter an Order in the form indexed hereto for which no prior motion has been

RULE 1557. ORDER DIRECTING PARTITION. POST-TRIAL RELIEF

If the court determines that there shall be partition hecause of a default or admission or after a hearing or trial, the court shall enter an order directing partition which shall set forth the names of all the co-tenants and the nature and extent of their interests in the property. No exceptions may be filed to an order recting partition.

Note

Pennsylvania Rule of Appellate Procedure 311(a)(6) provides that an appeal may be taken as of right from an order directing partition.

Adopted April 26, 1955, effective Nov. 1, 1955. Amended June 30,1983, effective July 1,1983; Oct. 19,1983, effective Jan. 1, 1984.

RULE 1558. PRELIMINARY CONFERENCE. APPOINTMENT OF MASTER

(a) The court, after the entry of the order directing partition, shall direct the parties or their attorneys to appear for a preliminary conference to consider

(1) whether the parties can agree upon a plan of partition or sale;

(2) the simplification of the issues;

(3) whether any issues or matters relating to the carrying out of the order of partition shall be referred to a master; and

(4) such other matters as may aid in the disposition of the action.

(b) The court, at any time after the preliminary conference, may appoint a master to hear the entire matter or to conduct any sale, or to act upon only specified issues or matters relating to the carrying out of the order of partition.

Adopted April 26,1955, effective Nov. 1,1955.

RULE 1559. MASTER. HEARING

If the court appoints a master he shall make such examinations and hold such hearings as may be necessary, giving reasonable notice thereof. He may employ appraisers and, with the authorization of the court, such other experts as are necessary to enable him to perform his duties.

Adopted April 26,1955, effective Nov. 1, 1955.

RULE 1560. PROPERTY CAPABLE OF DIVISION WITHOUT PREJUDICE

If division can be made without prejudice to or spoiling the whole, the property shall be divided as follows:

(a) into as many purparts as there are parties entitled thereto, the purparts being proportionate in value to the interests of the parties;

(b) if it cannot be divided as provided in Subdivision (a), then into as many purparts as there are parties entitled thereto, without regard to proportionae value;

(c) if it cannot be divided as provided in Subdivi sions (a) or (b), then into such number of purparts as shall be most advantageous and convenient without regard to the number of parties.

Adopted April 26,1955, effective Nov. 1,1956.

RULE 1561. PROPERTY CAPABLE OF PROPORTIONATE DIVISION. AWARD

Property divided under Rule 1560(a) shall be awarded to the parties according to their respective interests.

Adopted April 26,1955, effective Nov. 1,1955.

RULE 1562. PROPERTY NOT CAPABLE OF PROPORTIONATE DIVISION. AWARD

Subject to acceptance or refusal and private sale among the parties as hereinafter provided, property not capable of division under Rule 1560(a) but capable of division under Rule 1560(b) or (c), shall be awarded equitably among the parties with appropriae provisions for owelty. Sums payable as owelty shall be secured and paid in such manner and time as the court shall direct.

Adopted April 26,1955, effective Nov. 1, 1955.

RULE 1563. PROPERTY NOT CAPABLE OF DIVISION WITHOUT PREJUDICE. SALE. OBJECTIONS

(a) Except as otherwise provided in Subdivision (b), property not capable of division without prejudice to or spoiling the whole shall be offered for private sale confined to the parties.

(b) Parties defendant owning a majority in value of the property may object in writing to any sale, requesting that the property be awarded to them at its valuation fixed by the court and that their

interests in the same remain undivided. Upon such request the entire property shall be awarded to the parties objecting to sale, as tenants in common, subject to the payment to the parties desiring partition and sale of the amounts of their respective interests based upon the valuation. The amounts due the parties shall be charged as liens upon the property, to be paid in such manner and time as the court shall direct.

Adopted April 26,1955, effective Nov. 1, 1955.

RULE 1564. LIFE ESTATES

Property subject to a life estate may be partitioned upon the entry of security as the court may direct conditioned upon the payment of annual rental value, interest or income of such property to the life tenant. If a life tenant is entitled to exclusive possession of any part of the premises subject to partition, the court may deny partition of that part or may direct partition subject to such exclusive right of possession.

Adopted April 26,1955, effective Nov. 1,1955.

RULE 1565. RETENTION OF UNDIVIDED INTERESTS. ELECTION. PARTIES NOT APPEARING

(a) The court shall permit the shares of any two or more co-tenants to remain undivided between them if they so elect by writing filed within such time as the court or master shall direct.

(b) The court may permit the shares of any two or more co-tenants who do not appear in the action to remain undivided between them.

Adopted April 26,1955, effective Nov. 1,1955.

RULE 1566. PRELIMINARY DETERMINATION. NOTICE TO ACCEPT OR REJECT. PRIVATE SALE CONFINED TO THE PARTIES

(a) Preliminary notice of the proposed partition and allotment of purparts under Rule 1560(b) or (c) or the inability to partition the property as provided under Rule 1563 shall be given to the parties in such manner as the court by local rule or special order shall direct;

(b)(1) The notice in the case of proposed partition under Rule 1560(b) or (c)

shall require the parties within twenty (20) days after service thereof to accept or reject the proposed plan of allocation. The notice in the case of inability to partition shall state that the property will be sold unless objection is made as provided in Rule 1563(b).

(2) The notice shall include a description of the property and the proposed partition, the valuation of the property as a whole and of the purparts, if any; into which it is proposed to be divided, the mortgages, liens, encumbrances or charges which affect the whole or any part of the property and the amounts due thereon. A plan or map of the proposed division of the property may be attached to the notice.

(3) In lieu of the detailed information set forth in Subdivision (2), the notice may specify a place within the county where the proposed plan and information may be examined.

(c) If any party rejects the proposed allotment of the purparts or if no objection is made to a sale under Rule 1563, the property shall be offered for private sale by open bidding confined to the parties to be held upon not less than twenty (20) days' notice.

RULE 1567. PRIVATE SALE CONFINED TO PARTIES. CONDUCT. CONFIRMATION

In any private sale confined to the parties, the property, if divided into purparts, shall be offered for sale both in purparts and as a whole to determine which will bring the greater price. No sale of the whole shall be confirmed unless the amount bid equals or exceeds the valuation of the whole fixed by the court. No sale of any purpart shall be confirmed unless the amount bid for such purpart equals or exceeds its valuation as fixed by the court. The award and allocation to the successful bidder shall be made subject to the payment of owelty where required.

Adopted April 26,1955, effective Nov. 1, 1955.

RULE 1568. PUBLIC SALE

If a private sale of the property or of any purpart is not confirmed under Rule 1567, the property or purpart shall be sold at public sale or at private sale not confined to the parties, as the court may direct.

RULE 1569. MASTER'S REPORT.
EXCEPTIONS

(a) If the court appoints a master he shall file a report with respect to the matters submitted to him. The report shall follow the form of adjudication in Rule 1570, insofar as the scope of the reference to the master permits.

(b) The master shall give all persons in interest written notice of the date on which he intends to file his report and proposed decree and shall specify an address within the county where they may be examined. The master may change his report and proposed decree as he deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) Within ten days after notice of the filing of the report exceptions may be filed by any party to rulings on evidence, to findings of fact, to conclusions of law and to the proposed decree nisi. The court may, with or without taking testimony, remand the report or enter an adjudication in accordance with Rule 1570 which may incorporate by reference the findings and conclusions of the master in whole or in part.

Adopted April 26, 1955, effective Nov. 1,

1955. Amended Oct. 19,1983, effective Jan. 1,1984.

RULE 1570. ADJUDICATION AND DECREE

(a) The adjudication shall include findings of fact as follows:

(1) whether the property is capable of division, without prejudice to or spoiling the whole, into purparts proportionate in value to the interests of the cotenants;

(2) the number of purparts into which the property can be most advantageously divided, if partition portionate in value to the interests of the parties cannot be made;

(3) the value of the entire property and of the purparts;

(4) the mortgages, liens and other encumbrances or charges which affect the whole or any part of the property and the amount due thereon;

(5) the credit which should be allowed or the charge which should be made, in favor of or against any party because of use and occupancy of the property, taxes, rents or other amounts paid, services rendered, liabilities incurred or benefits

derived in connection there with or therefrom;

(6) whether the interests of persons who have not appeared in the action, or of defendants who have elected to retain their shares together shall remain undivided;

(7) whether the parties have accepted or rejected the allocation of the purparts or bid therefor at private sale confined to the parties; and

(8) whether a sale of the property or any purpart not confined to the parties is required and if so, whether a private or public sale will in its opinion yield the better price.

(b) The decree shall include:

(1) an appropriate award of the property or purparts to the parties subject to owelty where required;

(2) if owelty is required, the amount of the awards and charges which shall be necessary to preserve the respective interests of the parties, the purparts and parties for or against which the same shall be charged, the time of payment and the manner of securing the payments;

(3) the protection required for life tenants; unborn and unascertained remaindermen, persons whose whereabouts are

unknown or other persons in interest with respect to the receipt of any interest; and

(4) an order for a public or private sale of the property or part thereof where required.

Adopted April 26, 1955, effective Nov. 1,1955.

RULE 1571. TRUSTEES TO SATISFY LIENS AND CHARGES

(a) The court, upon motion of any party or person in interest, or upon recommendation of the master, may appoint a trustee to receive payment of

(1) any sum due any party or person in whose favor a lien exists and who is unknown or cannot be found;

(2) a principal sum necessary to secure the payment of any amount charged upon property to be partitioned;

(3) the purchase price of any property sold in partition which is subject to a Life estate and remainder.

(b) The trustee shall, upon entry of such security as the court shall direct and upon payment of the sums decreed, be authorized to satisfy of record any lien,

whereupon the property shall be freed and discharged from such lien.
Adopted April 26,1955, effective Nov. 1,1955.

RULE 1572. SALE NOT CONFINED TO PARTIES

(a) A sale not confined to the parties shall be conducted in such manner and upon such terms as the court shall direct by local rule or in the order of sale. It shall be subject to the power of the court to order a resale because of inadequacy of price.

(b) A public sale shall be held at such time and place as the court may direct. It shall be advertised in each county where any part of the property lies.

(c) If the purchaser is a party or a lien holder whose lien is discharged by the sale he shall be allowed a credit equal to the amount of his distributive interest in the purchase price, less any charges assessed against him. The excess of the bid shall be paid in cash.

(d) If the court directs the master to conduct the sale, the master before accepting payment for the property shall file a bond in double the amount of the

payment or in such lessor an amount as shall be fixed by the court.
Adopted April 26, 1955, Effective Nov. 1, 1955. Amended Nov. 14, 1978, Effective Dec. 2, 1978.

RULE 1573. RETURN OF SALE AND SCHEDULE OF DISTRIBUTION

(a) Where the sale has been conducted by a master he shall promptly file with the prothonotary a return of sale together with a proposed decree which shall

(1) confirm the sale;

(2) authorize the master to execute and deliver to the purchaser all necessary deeds and other instruments of title;

(3) contain appropriate provisions for the protection of life tenants, unborn and unascertained remainder men, persons whose whereabouts are unknown, or other persons in interest and for the release or discharge of such interests;

(4) direct distribution of the proceeds to the persons or parties entitled; and

(5) provide for the payment of costs.

(b) The master shall give all persons in interest written notice of the date on

which he intends to file his return of sale and proposed decree and shall specify an address within the county where they may be examined. The master may change his return of sale and proposed decree as he deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) If the court approves the return of sale in whole or in part, the court shall enter an appropriate decree nisi. Any part of the decree nisi as to which a motion for post-trial relief is not filed within ten days shall become final.

Adopted April 26, 1955, effective Nov. 1, 1955. Amended Oct. 19,1983, effective Jan. 1,1984.

RULE 1574. COSTS AND COUNSEL FEES

Costs shall be paid by the parties in proportion to their interests in the property. The compensation of appraisers, the master's fee and compensation of experts authorized by the court shall be taxed as part of the costs. Reasonable counsel fees may be charged against the property or fund resulting therefrom, and apportioned among the parties and their counsel in such amount and manner as the court shall deem equitable.

ONE TRIAL DOCKET PAGE

3-18-83: Order filed (Diggins,J.3-17-83) 236n/s

3-29-83: Order filed as set forth and Order of 3-17-83 is hereby withdrawn. (Diggins,J 3-28-83) 236 n/s

6-1-83 Notice of Master's hearing filed

10-15-85: Petition for a rule for security for costs filed Eodie:Notices

10-17-85: Rule granted. Ret. 11-14-85 Hrg. 11-25-85 (wright,J10-17-85) *All proceedings to stay meanwhile

11-20-85 petitioner deft.reply to new matter within answer to Pet. for security for costs filed

12-4-85 Order filed (Wright,J. 11-25-85) 236 n/s

12-16-85 Motion for reconsideration filed

4-7-86 Order filed Motion for reconsideration is denied and Howard Klein esq. is directed to make proper sale of the premises in accordance with Order dated 4-13-77 and affirmed by the Supreme Court and Order of 3-17-83 (Wright, J 4-7-86)236n/s

7-7-86 Copy of Petition for declaratory relief filed Eodie Notices

7-7-86 Rule refused (Reed,J. 7-2-86)

7-8-86 Order filed and Rule is refused and it is directed that partition proceedings proceed according to applicable Pa rules and Orders of the Court heretofore entered. (Reed,J.7-2-86)236 n/s

8-11-86 Order filed to conditions as set forth (Reed,J. 8-11-86) 236 n/s

8-10-87 Motion for Sale of Real Estate filed Eodie Notices
Eodie Hrg 8-24-87 (Agozzino C.A. 8-7-87)